

REMARKS

The above-identified application has been reviewed in light of the Office Action mailed on July 12, 2007 and the telephone interview conducted on October 2, 2007. By the present amendment, the Applicants have amended claims 21 and 35, have canceled claims 37-39, and have added claims 40-44. It is respectfully submitted that the claims pending in the application, namely claims 21, 23-28, 32-36, and 40-44, are fully supported by the specification, introduce no new matter, and are patentable over the cited references.

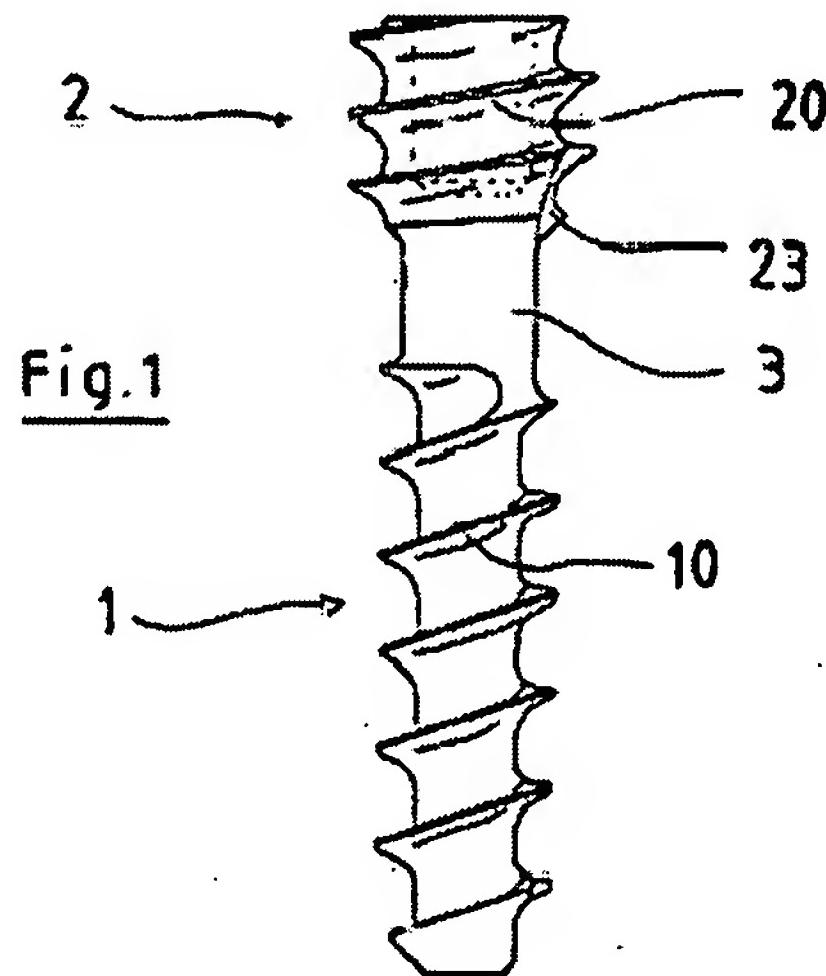
The Applicants would like to thank Examiner Gettman for her time and consideration extended to the Applicants' representatives, Dana A. Brussel and Justin Ripley, during a telephone interview conducted on October 2, 2007. During the interview, Examiner Gettman indicated that the cited references did not show a screw having a first thread and a second thread, where there was no longitudinal gap between the first thread and the second thread. The Applicants have incorporated Examiner Gettman's helpful suggestions in the amendments to the claims.

In the Office Action, claims 21, 23-24, 27 and 32-39 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,001,101 to Augagneur et al. ("Augagneur"). The Office Action stated that Augagneur discloses a surgical tack with a head having a drive thread, a barrel portion with a tissue engaging thread, wherein a portion of the drive thread and a portion of the tissue engaging thread define a gap therebetween, and a throughbore extending through the head and part of the barrel portion.

Claim 21, as amended, recites a surgical tack for attaching a material to tissue including, *inter alia*, a head having a drive thread and a barrel portion having a tissue engaging thread, "wherein the proximal end of the tissue engaging thread is in the same plane as the distal end of

the drive thread and the plane is transverse to a longitudinal axis of the barrel portion.” Claim 35, as amended, recites a surgical tack including, *inter alia*, a head having a first thread and a barrel portion having a second thread, “wherein a leading edge of the first thread and a trailing edge of the second thread are spaced apart thereby defining a discontinuity therebetween, the leading edge of the first thread and the trailing edge of the second thread are both in a common plane, the common plane is transverse to a longitudinal axis of the barrel portion.”

As shown below in Fig. 1, Augagneur discloses a screw device including a long threaded distal part 1 and a short threaded proximal head part 2. As seen in Fig. 1, the distal end of thread 20 and the proximal end of thread 10 do not exist in a common plane that is transverse to a longitudinal axis of the screw.



Therefore, Augagneur fails to disclose or suggest a surgical tack including, *inter alia*, a head having a drive thread formed and a barrel portion having a tissue engaging thread, “wherein the proximal end of the tissue engaging thread is in the same plane as the distal end of the drive thread and the plane is transverse to a longitudinal axis of the barrel portion”, as recited in amended claim 21, or a head having a first thread and a barrel portion having a second thread,

Appl. No. 10/517,402  
Amdt. Dated October 11, 2007  
Reply to Office Action Mailed July 12, 2007

“wherein a leading edge of the first thread and a trailing edge of the second thread are spaced apart thereby defining a discontinuity therebetween, the leading edge of the first thread and the trailing edge of the second thread are both in a common plane, the common plane is transverse to a longitudinal axis of the barrel portion”, as recited in amended claim 35. Accordingly, it is respectfully submitted that the rejection of the Office Action has been overcome and that claims 21 and 35 are in condition for allowance. By the present amendment, claims 37-39 have been canceled and it is respectfully requested that the rejection of these claims be withdrawn. Furthermore, since claims 23, 24, 27 and 32-24 depend from amended claim 21, and claim 36 depends from amended claim 35, it is respectfully submitted that these claims are also in condition for allowance.

In the Office Action, claim 26 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over Augagneur in view of U.S. Patent No. 6,030,162 to Huebner (“Huebner”). According to the Office Action, Augagneur fails to disclose a chamfered drive thread on the head portion, but discloses a chamfer on the leading section. The Office Action continues, noting that Huebner also fails to disclose a chamfered drive thread on the head portion, however, does disclose a chamfer on the leading section. The Office Action asserted that it would have been obvious to add a chamfered portion to the head portion.

As discussed hereinabove, Augagneur fails to disclose or suggest the surgical tack recited in amended claim 21. Adding the chamfered portion disclosed in Huebner fails to cure the deficiencies of Augagneur. Therefore, since claim 26 depends from independent claim 21, it is respectfully submitted that the rejection of the Office Action has been overcome and that claim 26 is in condition for allowance.

Appl. No. 10/517,402  
Amdt. Dated October 11, 2007  
Reply to Office Action Mailed July 12, 2007

In the Office Action, claims 25 and 28 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Augagneur in view of U.S. Patent No. 5,169,400 to Mühling et al. (“Mühling”). The Office Action stated that Augagneur discloses a throughbore, but fails to disclose that the throughbore has a D-shaped cross-section. According to the Office Action, it would have been obvious to modify the throughbore of Augagneur to include a shape that better applies the torque of an insertion tool as disclosed in Mühling.

As discussed hereinabove, Augagneur fails to disclose or suggest the surgical tack recited in amended claim 21. Adding the non-circular throughbore of Mühling fails to cure the deficiencies of Augagneur. Mühling fails to disclose or suggest any features that, in combination with Augagneur, would suggest the surgical tack recited in amended claim 21. Since claims 25 and 28 depend from independent claim 21, it is respectfully submitted that these claims are in condition for allowance.

Applicant has added new claims 40-44. It is respectfully submitted that claim 40 is not anticipated or suggested by the cited references, because the cited references do not disclose or suggest a surgical tack including a head having a drive thread and a barrel portion having a tissue engaging thread, “wherein a distal end of the drive thread is radially spaced from a proximal end of the tissue engaging thread within a plane that is transverse to a longitudinal axis of the barrel portion.” Claims 41-44 depend from claim 40, therefore, it is respectfully submitted that claims 41-44 are, for at least this reason, in condition for allowance.

Appl. No. 10/517,402  
Amdt. Dated October 11, 2007  
Reply to Office Action Mailed July 12, 2007

Prompt and favorable action on these claims, namely claims 21, 23-28, and 32-44, is earnestly requested. Should the Examiner desire a further telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

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